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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,733	05/03/2001	Craig Uhrich	TWI-12410	8047

7590 05/04/2004

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San Francisco, CA 94105

EXAMINER

STOCK JR, GORDON J

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,733

Applicant(s)

UHRICH ET AL.

Examiner

Gordon J Stock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 16-26, 29-31 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11, 16-26, 29-31 and 33-36 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040416</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 April 2004 has been entered.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the limitation, "is less than 5mm in diameter," of **claims 2 and 19** lacks antecedent basis. Corrections are required.

The specification is objected to for the following: on page 2, lines 10-11, the country of issue for the patents is missing making the patent numbers indefinite. Examiner suggests --described in patents,-- read "described in U.S. Patents," In addition, on page 5, line 1, the country of issue for the patents should be added to make the patent numbers definite. Examiner suggests --5,877,859; 5,608,526--read "U.S. Patent 5,877,859 to Aspnes et al.; U.S. Patent 5,608,526 to Piwonka-Corle et al."

No new matter should be added to the specification upon correction.

Allowable Subject Matter

3. **Claims 1-11, 16-26, 29-31, and 33-36** are allowed.

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As to **claim 1**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a broadband ellipsometer the particular all-refractive focusing optical system comprising three lenses including two convex calcium fluoride lenses disposed on opposing sides of a concave fused silica lens, in combination with the rest of the limitations of **claims 1-11, 16-17**.

As to **claim 19**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a broadband ellipsometer the particular all-refractive focusing optical system including three lenses that include two convex calcium fluoride lenses disposed on opposing sides of a concave fused silica lens, in combination with the rest of the limitations of **claims 19-26, 29-31**.

As to **claim 33**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a broadband ellipsometer the particular all-refractive focusing optical system including two convex calcium fluoride lenses disposed on opposing sides of a concave fused silica lens, in combination with the rest of the limitations of **claims 33-36**.

Response to Arguments

4. Applicant's arguments, see Remarks, filed 16 April 2004, with respect to the claim rejections have been fully considered and are persuasive. In view of the arguments and in view of the amendment to the claims, the rejection under 35 U.S.C. 103(a) of the claims has been withdrawn. In regards to the arguments in regards to the objections to the specification, the arguments concerning claims 1, 7, 8, 17, 23, 24, 30, 33, and 34 are persuasive; therefore, the objection to the specification in view of those claims have been withdrawn. However, the arguments in regards the objection to the specification in regards to **claims 2 and 19** are not

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found persuasive. The limitations that lack antecedent basis in the specification are limitations that were originally filed. Examiner apologizes for the inconvenience for the objections to the specification in the previous action and this action, but under further consideration objections to the specification were found. Specifically, the specification does not disclose (in view of claims 2 and 19 (as originally filed) the probe beam spot having a diameter less than 5mm. The disclosure specifically discloses on page 7 lines 14-15 that the “spot size should be less than 3mm and preferably about 1.5mm in diameter.”

Conclusion

5. This application is in condition for allowance except for the following formal matters:
Objections to the specification as stated above.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Fax/Telephone Numbers

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

- 1) Contain either a statement “DRAFT” or “PROPOSED AMENDMENT” on the fax cover sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

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Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is: (703) 872-9306

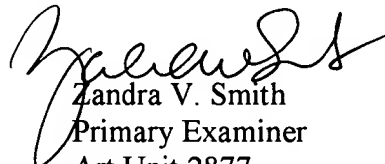
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (571) 272-2431.

The examiner can normally be reached on Monday-Friday, 10:00 a.m. - 6:30 p.m.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.


gs

April 22, 2004


Zandra V. Smith
Primary Examiner
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